

2SHB 1488 - H AMD TO H AMD (H-4955.2/06) 863
By Representative Armstrong

ADOPTED 02/14/2006

1 On page 1, after line 2 of the amendment, strike all material
2 through page 7, line 20 and insert the following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Department" means the department of ecology.

6 (2) "Electronic enclosure" means the plastic housing that encloses
7 the components of electronic products, including but not limited to
8 televisions and computers.

9 (3) "Manufacturer" includes any person, firm, association,
10 partnership, corporation, governmental entity, organization, or joint
11 venture that produces a product containing polybrominated diphenyl
12 ethers or an importer or domestic distributor of a noncombustible
13 product containing polybrominated diphenyl ethers. A manufacturer does
14 not include a retailer:

15 (a) Of a private label brand or cobranding; or

16 (b) Who assembles components to create a single electronic product
17 based on an individual consumer preference.

18 (4) "Polybrominated diphenyl ethers" means chemical forms that
19 consist of diphenyl ethers bound with bromine atoms. Polybrominated
20 diphenyl ethers include, but are not limited to, the three primary
21 forms of the commercial mixtures known as pentabromodiphenylether
22 (penta-bde), octabromodiphenylether (octa-bde), and
23 decabromodiphenylether (deca-bde).

24 (5) "Retailer" means a person who offers a product for sale at
25 retail through any means including, but not limited to, remote
26 offerings such as sales outlets, catalogs, or the internet, but does
27 not include a sale that is a wholesale transaction with a distributor
28 or a retailer. A retailer does not include a person, firm,
29 association, partnership, corporation, governmental entity,

1 organization, or joint venture that both manufactures and sells a
2 product at retail.

3 (6) "Safer alternative" means an alternative that has undergone the
4 same level of study as the product it is meant to replace and has been
5 found to have a better toxicity profile and less impact for human
6 health or the environment.

7 (7) "Technically feasible alternative that is available at a
8 reasonable cost" means an alternative that is available at a cost and
9 in sufficient quantity to permit the manufacturer or user to maintain
10 an economically viable product.

11 (8) "Transportation vehicle" means any mechanized vehicle that is
12 used to transport goods or people including, but not limited to,
13 airplanes, automobiles, motorcycles, trucks, buses, trains, boats,
14 ships, streetcars, or monorail cars.

15 (9) "Used product" means any product that has been previously
16 owned, purchased, or sold in commerce. "Used product" does not include
17 any product manufactured after January 1, 2007.

18 NEW SECTION. **Sec. 2.** (1) Except as provided in subsection (2) of
19 this section and section 3 of this act, after January 1, 2007, no
20 person may manufacture, knowingly sell, offer for sale, distribute for
21 sale, or distribute for use in this state noncomestible products
22 containing more than one percent of pentabromodiphenylether or
23 octabromodiphenylether.

24 (2) Subsection (1) of this section does not apply to:

25 (a) Products containing decabromodiphenylether;

26 (b) Original equipment manufacturer replacement parts;

27 (c) The processing and disposal of recyclables containing penta-bde
28 or octa-bde in compliance with applicable federal, state, and local
29 laws;

30 (d) A manufacturer or user of safety systems required by the
31 federal aviation administration;

32 (e) The manufacture, sale, repair, distribution, maintenance,
33 refurbishment, or modification of any raw material or component part
34 used in a transportation vehicle or any new or used transportation
35 vehicle with component parts, including original parts and spare parts;

36 (f) The manufacture, sale, repair, distribution, maintenance,

1 refurbishment, or modification of equipment used primarily for military
2 or federally funded space program applications. This exemption does
3 not cover consumer-based goods with broad applicability;

4 (g) The sale or distribution by a business, charity, or private
5 party of any used product containing polybrominated diphenyl ethers; or

6 (h) Medical monitoring and control instruments and systems, medical
7 devices, and products as defined in the federal food, drug, and
8 cosmetic act (21 U.S.C. Sec. 301 et seq.).

9 (3) In-state retailers in possession of products on January 1,
10 2007, that are banned for sale under subsection (1) of this section may
11 exhaust their stock through sales to the public.

12 NEW SECTION. **Sec. 3.** A manufacturer or user of safety systems
13 required by the federal aviation administration may apply for an
14 exemption for a specific use of penta-bde or octa-bde by filing a
15 written petition with the department. The exemption may be granted for
16 a term not to exceed eighteen months and may be renewed upon written
17 application if the department finds that the specific use of penta-bde
18 or octa-bde continues to meet the criteria of this section and the
19 manufacturer or other persons comply with the conditions of its
20 original approval. The department may grant an exemption for a
21 specified use of penta-bde or octa-bde with or without conditions upon
22 finding that the petitioner has demonstrated that:

23 (1) A technically feasible alternative to the use of penta-bde or
24 octa-bde is not available at reasonable cost; or

25 (2) The potential harm to public health and the environment
26 directly posed by a technically feasible and available alternative is
27 greater than the potential harm posed by penta-bde or octa-bde.

28 NEW SECTION. **Sec. 4.** On or about December 15, 2007, the
29 department and the department of health shall submit to the appropriate
30 committees of the legislature a report that reviews and updates the
31 available scientific research on deca-bde, including relevant risk
32 assessments and relevant findings and rulings by the United States
33 environmental protection agency and the European commission, to address
34 the following issues:

35 (1) The use of deca-bde in products sold in the state;

1 (2) What human health effects could result from exposure to deca-
2 bde, and are current levels of exposure at levels that could produce
3 these effects;

4 (3) Any data available on the human body burden or environmental
5 occurrence of deca-bde;

6 (4) Whether deca-bde breaks down into other chemicals that could
7 pose public health concerns;

8 (5) The availability of safer, technically feasible alternatives
9 for deca-bde.

10 NEW SECTION. **Sec. 5.** Nothing in this chapter restricts the
11 ability of a manufacturer, importer, or distributor from transporting
12 products containing polybrominated diphenyl ethers through the state,
13 or storing such products in the state for later distribution outside
14 the state.

15 NEW SECTION. **Sec. 6.** The department shall develop a program to
16 assist retailers in identifying potential products containing penta-bde
17 and octa-bde in their inventory.

18 NEW SECTION. **Sec. 7.** A manufacturer of products containing penta-
19 bde and octa-bde in violation of this chapter is punishable by a civil
20 penalty not to exceed one thousand dollars for each violation in the
21 case of a first offense. Manufacturers who are repeat violators are
22 liable for a civil penalty not to exceed five thousand dollars for each
23 repeat offense. Penalties collected under this section must be
24 deposited in the state toxics control account created in RCW
25 70.105D.070.

26 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute
27 a new chapter in Title 70 RCW."

28 Correct the title.

EFFECT: Removes the ban on deca-BDE and retains the ban on penta-
BDE and octa-BDE. Directs the Department of Ecology and the Department

of Health to review scientific research on deca-BDE including findings and rulings by the Environmental Protection Agency and the European Commission. Removes a provision directing the Department of General Administration to give a priority and preference to the purchase of products that do not contain PBDEs.

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